

JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division

JAMES C. MANN (CABN 221603)
Assistant United States Attorney

1301 Clay Street, Suite 340-S
Oakland, California 94612
Telephone: (510) 637-3705
Facsimile: (510) 637-3724
E-Mail: James.C.Mann@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) No. CR-07-0750 CW
Plaintiff,) GOVERNMENT'S SENTENCING
v.) MEMORANDUM
HENRY MAURICE HUNTER,) Sentencing Date: March 5, 2008, 2:00
Defendant.) p.m., The Honorable Claudia Wilken

The United States of America requests that Defendant Henry Maurice Hunter be sentenced to 15 months imprisonment, the low end of the United States Sentencing Guidelines (“Guidelines”) range, and three years of supervised release, consistent with the Plea Agreement and the recommendation of the United States Probation Office (“USPO”).

INTRODUCTION

26 After failing to report to the Cornell Corrections halfway house to complete his
27 prison sentence, on December 5, 2007, Defendant pled guilty to a single-count
28 information alleging that he illegally escaped from the custody of the Attorney General

1 and his authorized representative in violation of Title 18, United States Code, Sections
 2 751(a) and 4082. This conduct represents the most recent example of Defendant's
 3 repeated violations of both his custodial and supervised release conditions over the past
 4 17 years. Since 1991, Defendant has violated his state parole and been returned to prison
 5 on at least three occasions; Defendant's state probation has been revoked at least three
 6 times and modified on at least one additional occasion; and, finally, Defendant's federal
 7 supervised release has been revoked two times. Indeed, the instant offense arises from
 8 Defendant's escape from a ten-month prison term he was serving following the most
 9 recent revocation of his supervised release. Given Defendant's inability to comply with
 10 the terms of his confinement or the terms of his supervised release, a sentence of 15
 11 months imprisonment is necessary to protect the public from further crimes of Defendant,
 12 to afford adequate deterrence to Defendant's criminal conduct, and to promote respect for
 13 the law.

14 **FACTUAL BACKGROUND**

15 The Presentence Investigation Report ("PSR") adequately sets forth the criminal
 16 activity. Consequently, the United States will not repeat the information in this section.

17 **ARGUMENT**

18 **I. PURSUANT TO THE SENTENCING GUIDELINES, DEFENDANT
 19 SHOULD BE SENTENCED TO 15 MONTHS IMPRISONMENT AND
 THREE YEARS OF SUPERVISED RELEASE.**

20 The United States agrees with the Guidelines calculations set forth in the PSR
 21 resulting in a total offense level of 7 and a criminal history category of VI. PSR ¶¶ 25,
 22 40-42. Pursuant to the Plea Agreement in this matter, the United States recommends a
 23 sentence of 15 months imprisonment.

24 **II. APPLICATION OF THE FACTORS IN 18 U.S.C. § 3553(a)
 25 DEMONSTRATES THAT A SENTENCE OF 15 MONTHS
 IMPRISONMENT AND THREE YEARS OF SUPERVISED RELEASE IS
 26 REASONABLE.**

27 The Supreme Court recently noted that the "Guidelines . . . seek to embody the §
 28 3553(a) considerations, both in principle and in practice." *Rita v. United States*, 127 S. Ct. 2456, 2464 (2007). These factors or considerations include the need for the sentence

1 to promote respect for the law, afford adequate deterrence, protect the public from further
2 criminal conduct by the defendant, and provide the defendant with needed training and
3 medical care. 18 U.S.C. § 3553(a). The sentence recommended by the government and
4 the USPO in the PSR achieves all of these sentencing goals. A sentence of 15 months
5 imprisonment, three-years supervised release, and a \$100 special assessment is reasonable
6 and appropriate.

7 **A Sentence Of 15 Months Imprisonment Is Necessary To Protect The**
8 **Public, Afford Adequate Deterrence, And To Promote Respect For The**
9 **Law.**

10 Defendant has been in custody or on some form of monitored release for almost all
11 of the past 19 years. (PSR ¶¶ 27-39.) Stated differently, but for possibly a few months in
12 2000 and 2001, Defendant has been serving some form of a criminal justice sentence -
13 either in custody or on supervised release - for his entire adult life. (Id.) He has been
14 convicted of at least ten separate crimes in both state and federal courts, including the
15 armed robbery of a pizza parlor in 1994 for which he was sentenced to six years in prison.
16 (Id.) Defendant's state parole has been revoked at least three times; his state probation
17 has been revoked at least three times and modified at least once; and, his federal
supervised release has been revoked two times. (Id.)

18 In addition to Defendant's criminal convictions, which put him into criminal
19 history category VI in this case, Defendant has been arrested for a number of violent
20 crimes. For example, in 1991, Defendant was arrested for robbing a pizza delivery person
21 at gunpoint. (PSR ¶ 43.) The charges were apparently dismissed, however, when
22 Defendant agreed to plead guilty to the separate armed robbery of a different pizza parlor.
23 (Id.) Additionally, in 1992, Defendant was arrested for beating a woman and pointing a
24 gun at her at a gas station. (PSR ¶ 44.) And, in 1998, Defendant was arrested for beating
25 his girlfriend with an iron during a fight. (PSR ¶ 45.)

26 Given Defendant's lengthy criminal history and inability to comply with the terms
27 of his supervision, either in custody or out-of-custody, a sentence of 15 months is
28

1 reasonable and necessary to protect the public, afford adequate deterrence, and to promote
2 respect for the law.

3 **B. A Sentence Of 15 Months Imprisonment May Provide Defendant With
Necessary Training And Medical Care.**

4

5 Defendant admits to a long history of substance abuse. (PSR ¶¶ 61-65).
6 Defendant's extensive criminal history is apparently due, in part, to his drug abuse. For
7 example, Defendant was convicted of a felony cocaine sales violation in 1991. (PSR ¶
8 33.) Moreover, Defendant claims that he participated in an armed robbery of a pizza
9 parlor in 1992 in order to purchase drugs. (PSR ¶ 36.) Additionally, Defendant's
10 supervised release was revoked in April 2005 after he tested positive for narcotics on four
11 occasions, failed to appear for narcotics testing on three occasions, and failed to appear
12 for counseling on two occasions. (PSR ¶ 38.) His supervised release was revoked again
13 in November 2006 after he tested positive on three occasions for cocaine and failed to
14 appear for a drug test. (PSR ¶ 38.) Further, according to defense counsel, the instant
15 offense is "a drug relapse. . . . Mr. Hunter is a long-time drug addict." (Letter from
16 defense counsel to USPO dated February 1, 2008.)

17 Despite his admitted substance abuse problem, Defendant has failed to complete
18 necessary treatment while out of custody. Defendant failed to reside at a residential drug
19 treatment facility, leading, in part, to the revocation of his supervised release in April
20 2005. (PSR ¶¶ 38, 64.) Therefore, a sentence of 15 months imprisonment and three years
21 of supervised release may provide Defendant with the resources to address his substance
22 abuse problem.

23 **III. THE SEARCH CONDITION IN THE PSR SHOULD BE MODIFIED.**

24 On page 3 of the "Sentencing Recommendation" attached to the PSR, the
25 Probation Officer suggests that Defendant, while on supervised release, shall submit to a
26 search by a Probation Officer based on "reasonable suspicion." (PSR, Additional
27 Condition 3.) Considering Defendant's lengthy criminal history, and in light of the recent
28 Ninth Circuit decision in United States v. Betts, 511 F.3d 872 (9th Cir. 2007), the search

1 clause applicable during Defendant's term of supervised release should be expanded.

2 Specifically, the government submits that this condition should read as follows:

3 The defendant shall submit his person, residence, office, vehicle, or any property
4 under his control to a search at any time by any law enforcement officer or any
probation officer with or without a warrant and with or without cause.

5 In Betts, the Ninth Circuit upheld a substantially similar search clause, even
6 though the defendant in that case had no criminal history. In doing so, the Ninth Circuit
7 relied on Samson v. California, 126 S.Ct. 2193 (2006), which held that a similarly worded
8 condition imposed upon all parolees in California did not violate the Fourth Amendment
9 even though the condition did not require reasonable suspicion. Betts, 511 F.3d at 876
10 (citing Samson, 126 S.Ct. at 2202). The Ninth Circuit noted that in Samson, the Supreme
11 Court had considered the high risk of recidivism for people convicted of crimes and
12 reasoned that a reasonable suspicion requirement would give parolees greater opportunity
13 to anticipate searches and hide criminal conduct. Id. Because there was "no sound
14 reason for distinguishing parole from supervised release" with respect to this condition,
15 and noting that the Court in Samson even drew the analogy to supervised release, the
16 Ninth Circuit determined that the expansive search condition not requiring reasonable
17 suspicion was appropriate. Id. At least one other circuit has agreed with the Ninth
18 Circuit in this regard and approved suspicionless searches as a condition of supervised
19 release. United States v. Hanrahan, 508 F.3d 962, 971 (10th Cir. 2007) (approving
20 suspicionless search condition for defendant convicted of unlawful possession of a
21 firearm) (citing United States v. White, 244 F.3d 1199, 1208 (10th Cir. 2001) (approving
22 suspicionless search condition for defendant convicted of possession of child
23 pornography)).

24 Such a condition is appropriate here as well. As set forth above, Defendant's
25 criminal history is lengthy and constant. While serving the supervised release portion of
26 his sentence, no law enforcement officer should need reasonable suspicion to search
27 Defendant.

28 ////

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court accept the parties' Plea Agreement and the recommendation contained in the PSR, and determine that Defendant's Guidelines offense level is 7 and his criminal history category is VI. The United States further respectfully requests that, taking into consideration the sentencing factors set forth in section 3553(a), the Court sentence Defendant to the low-end of the applicable Guidelines range, namely, 15 months imprisonment, impose a three-year term of supervised release (under the terms and conditions recommended by the USPO), and order Defendant to pay a \$100 special assessment.

DATED: February 29, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/
JAMES C. MANN
Assistant United States Attorney